IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.4867 of 2000
Date of Decision : September 11, 2006.

Union of India and others ..... Petitioners

Vs.

HC Chaman Lal No.6262551 ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Ms.Renu Bala Sharma, Advocate
for the petitioners.

Mr.A.P.S.Rana, Advocate
for the respondent.

* * *

P.S.Patwalia, J. (Oral) :

The present revision petition has been filed challenging the order dated 1.8.2000 dismissing the objections filed by the Union of India, petitioner in this petition, in an execution application filed by Chaman Lal, plaintiff in the suit, respondent herein. Also challenge is to the order dated 18.10.2000 whereby an application seeking review of the order dated 1.8.2000 was dismissed by the Executing Court on 18.10.2000.

The plaintiff Chaman Lal filed a suit aggrieved against orders

dated 28.11.1988 and 24.5.1989. The plaintiff was enrolled as a Constable in the Punjab Armed Police on 27.11.1962. Subsequently he was transferred to the Haryana Armed Police and thereafter to the S.S.B under the administrative control of the Director General of Security, S.S.B. Directorate, New Delhi. He was promoted to the post of Head Constable and thereafter he qualified the required promotion test prescribed under the rules and his name was included in List-D, the panel maintained for promotion to the rank of ASI. By an order dated 28.11.1988 his name was removed from promotion List-D. His suit challenging order dated 28.11.1988 was decreed by the trial court. In appeal however the learned District Judge, Gurdaspur reversed the findings on issues no.1 and 2 which were as to whether the order dated 28.11.1988 was illegal, null and void and as to whether plaintiff was entitled to any consequential relief. Consequently the order dated 28.11.1988 removing the name of the plaintiff from the panel/List-D and the order dated 24.5.1989 rejecting the plaintiff's appeal against the said order were upheld. In a sense therefore the action of the respondents in removing the name of the plaintiff from List-D was held to be legal and valid. However while granting relief the learned District Judge held that as a result of the removal of the name of the plaintiff from the List-D, he could not be barred for promotion for all times to come. It was therefore held that if the plaintiff qualifies all the necessary conditions required for his name to be included in List-D, the order of removal dated 28.11.1988 could not be a permanent bar to his promotion. Paragraph 9 dealing with relief is as hereunder :-

"Issue No.6 (Relief) :

9. *For the foregoing reasons, discussion*

and my findings issuewise, I accept the appeal partly and dismiss the suit of the plaintiff partly and pass decree to the extent that I direct the defendants to reconsider the name of the plaintiff if he qualifies all the necessary conditions required for his name to be mentioned included in the list `D' for security and this order Ex.P5 should not be made a permanent stigma for his promotion in future. However, I leave the parties to bear their own costs. Decree sheet be prepared and file be consigned to the record room.

Pronounced in open Court on
this 18th Day of April, 1998.

Sd/-
District Judge,
Gurdaspur."

It is the conceded position that the plaintiff being aggrieved by the judgment of District Judge, Gurdaspur had filed Regular Second Appeal in this court bearing R.S.A.No.2491 of 1998 which was admitted and is pending for final adjudication.

During the pendency of the proceedings in this Court the plaintiff filed an execution application. The Executing Court issued notice in the said application. The petitioners Union of India appeared before the court. It was the case of the petitioners Union of India before the Executing Court that once the order removing the name of the plaintiff from List-D had been upheld by the learned District Judge, Gurdaspur, the plaintiff

could be considered for promotion to the post of ASI only after he again qualifies the promotion course and thereafter gets his name re-entered into List-D. On the paper book of this revision petition also there is an order dated 1.3.2000 whereby claim of the plaintiff was considered by the petitioners for promotion but was rejected. The order in its entirety reads as under :-

> *"Departmental Promotion Committee consisting of following officers met at Divisional Head Quarters Shimla-4 on 24th October, 2000 for considering promotion case in respect of No.6262551HC/GD Chaman Lal of Group Centre, SSB, Sapri as ordered vide Divisional Headquarters Endst.No.B-11-13/2K/VI/DO-19827-30 dated 25.9.2000.*
>
> *1. Shri S.P.Kaushal, IPS — Chairman*
> *Deputy Inspector General*
> *DIV, HQRS, Shimla.*
>
> *2. Shri I.J.Kondal, — Member-I*
> *Commandant*
> *G.C.SSB, Sapri*
>
> *3. Shri K.R.Verma — Member-II*
> *Area Organiser (Hqrs)*
> *Div.Hqrs., Shimla*
>
> ***2.*** *No.6262551 HC/GD Chaman Lal of Group Centre, SSB, Sapri had qualified "D" List Test for promotion to the rank of Sub Inspector (GD)*

during June, 1983. However due to unsatisfactory service records, he was removed from the "D" List vide order No.B-II/4/88/31650 dated 28.11.1988. The entry to this effect has been recorded in his service book on the reverse page 3H and published in the F.O.No.301/88 dated 15.12.1988.

3. *For removal from"D" List No.6262551 HC/GD Chaman Lal filed Civil Suit No. 593/90 in the Sub Judge Ist Class Gurdaspur. The Sub Judge Ist Class Gurdaspur has passed the order dated 02 March, 1995 that orders dated 28.11.88 and 24.5.89 were illegal and void and the plaintiff is entitled to be considered for promotion to the next higher rank from the date his juniors were promoted to the higher rank. Civil Appeal No.46 of 29.5.95 against the Judgment and decree dated 2.3.95 was filed by the Department in the Court which was partly accepted and partly dismissed. Following relief was granted by the appellate Court of Learned District Judge, Gurdaspur vide Judgment dated 18.4.1998 :-*

> *"For the foregoing reasons, discussion and my findings issuewise, I accept the appeal partly and dismiss the suit of the plaintiff partly and pass decree to the extent that I*

direct the defendants to reconsider the name of the plaintiff if he qualifies all the necessary conditions required for his name to be mentioned included in the list `D' for security and this order Ex.P5 should not be made a permanent stigma for his promotion in future. However, I leave the parties to bear their own costs."

4. *No.6262551 HC/GD Chaman Lal was given chance to appear in the `D' List test but he hand submitted unwillingness vide his applications dated 26.3.99 and 3.4.99.*

5. *No.6262551 HC/GD Chaman Lal has been removed from approved `D' list test due to his unsatisfactory service records on revision of `D' list as per instructions contained in 65 of CRPF Rules 1955 read with Para 8.4 of Establishment Manual of CRPF 1976 as he had failed to keep up the required standard of efficiency owing to unsatisfactory records vide order No.B-II/4/88/31650 dated 28.11.1988.*

6. *At present one vacancy of SI/GD is lying vacant due to death of SI/GD Bar Chand of G.C.SSB, Dharampur in the general category w.e.f. 15.3.2000. The said vacancy has to be filled up by promoting the eligible and senior most*

HCGD of this Division.

7. *As per the judgment in execution application No.97/96 dated 1.8.2000, the case in respect of No.6262551 HC/GD Chaman Lal is to be considered for the promotion from HC/GD to SI/GD without passing the `D' List test. But as per promotion rules approved by the Cabinet Secretariat vide their No.EA/SE-189/74 dated 25.5.76 circulated under SSB Dt.e.Memo No.31/1/76-SSB(E) dated 15.7.76 HC/GD can not be considered for promotion to the rank of SI/GD without passing `D' list test. The beared is the opinion that No.6262551 HC/GD Chaman Lal is not eligible for promotion to the rank of SI/GD without qualifying `D' list test which is mandatory for promotion from HC/GD to SI/GD. Hence he is not considered fit for promotion to the rank of SI/GD. Therefore, the vacancy of SI/GD Bar Chand may be filled up by promoting eligible and senior most `D' list approved HC/GD.*

CHAIRMAN

Sd/-
(S.P.Kaushal, IPS)
Dy.Inspector General
Div.Hqrs.Shimla

Member-I

Sd/-

(I.J.Kondal)
Commandant
GC, SSB, Sapri

Member-II

Sd/-

(K.R.Verma)
Area Organiser (HQRS)
Div.HQRS, Shimla

COUNTER SIGNED

Sd/-

Divisional Orgn.
Punjab & Himachal Pradesh,
Government of India."

The Executing Court however rejected the objections filed by the Union of India. The claim of Union of India that the plaintiff could not be promoted till such time as he again passes the promotion course was rejected. A review application filed by Union of India against the said order was also rejected. It is against the aforementioned two orders that the present revision has been filed.

I have heard learned counsel for the parties and have also gone through the record. I have also seen the judgments passed by the trial court and the learned District Judge, Gurdaspur in the civil suit filed by the plaintiff. A reading of the judgment of the trial court would show that the trial court decreed the suit after setting aside the order dated 28.11.1988 and the order passed in appeal. In the first appeal filed by the plaintiff the findings on these issues were however reversed. The necessary consequence of this is that the order dated 28.11.1988 removing the name of the plaintiff from promotion List-D stands revived. In this situation the plaintiff could only get his name in List-D included only after he qualifies

the promotion course. No doubt this finding is subject to final view to be taken by this Court in Regular Second Appeal. However as at present I am of the opinion that the plaintiff cannot be considered for further promotion till he qualifies the promotion course again.

In any case the respondents have considered the claim of the plaintiff in terms of the order passed by the learned District Judge, Gurdaspur passing a detailed speaking order on 1.3.2000 which has already been reproduced herein above. In this view of the matter I am of the opinion that the claim of the plaintiff stands satisfied in terms of the decree granted to him by the court below. Therefore orders dated 1.8.2000 and the order passed in the review application cannot be sustained. They are accordingly set aside.

The present revision petition is allowed in the aforementioned terms. It may however be clarified that this would be subject to final orders which would be made by this court in R.S.A.No.2491 of 1998 filed by the plaintiff.

September 11, 2006 (P.S.Patwalia)
monika Judge